IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1490 OF 2004.

The State of Maharashtra. ... Appellant.

Versus.

Kisan Ganpat Laigude & another. ... Respondents.

Shri D.P.Adsule, A.P.P. for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 22nd November, 2006.

P.C.:

1. Heard the learned A.P.P. on the prayer for grant of leave. The acquittal of the Respondent is for offences under sections 434 and 447 of the Indian Penal Code and under sections 26 and 63(c) of the Indian Forest Act. The case of the prosecution is that the Respondents are owners of land bearing Gat No.97. The allegation of the prosecution is that the forest land is on the western side of the said land bearing Gat No.97 and the Respondents have committed encroachment over the forest land to the extent of 42 Ares. The defence of the Respondents was that they are in possession of their own land and they have not committed any encroachment. The prosecution led evidence. The main evidence was of P.W.3 Vikas Khude, who had prepared a map showing the alleged encroachment by the Respondents over the forest land. He admitted that before preparing the map he did not measure the land bearing Gat No.97 which was admittedly owned by the Respondents. The learned trial

Judge observed that without measuring the adjoining land of the Respondents, the Surveyor could not have fixed the boundary of the forest land. That is the reason why the case of the prosecution has been discarded.

2. The prosecution could not have succeeded without establishing the encroachment by the Respondents. Apart from this fact, the Respondents have got their land measured and surveyed through a competent Survey Officer i.e. D.I.L.R. The Surveyor was examined as a defence witness.

3. In view of this position, there is no merit in the Appeal. No case is made out for grant of leave. The Appeal is dismissed.

Judge.